

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TROY P. REGAS,

Plaintiff,

v.

FREEMONT INVESTMENTS & LOAN;
et al.,

Defendants.

3:10-cv-0366-LRH-VPC

ORDER

Before the court is plaintiff Troy P. Regas's ("Regas") second motion to remand filed on August 20, 2010. Doc. #28.¹

I. Facts and Procedural History

On February 1, 2007, Regas purchased real property through a mortgage note and deed of trust executed by defendant Fremont Investment & Loan. Regas defaulted on the mortgage and defendants initiated non-judicial foreclosure proceedings.

Subsequently, on May 5, 2010, Regas filed a complaint in state court against defendants alleging thirteen causes of action: (1) violation of N.R.S. 598D.100; (2) conspiracy; (3) permanent injunction; (4) declaratory relief; (5) wrongful foreclosure; (6) fraud through omission; (7) quiet title; (8) breach of good faith and fair dealing; (9) tortious breach of good faith and fair dealing;

¹ Refers to the court's docket entry number.

1 (10) civil conspiracy; (11) racketeering; (12) unjust enrichment; and (13) fraud in the inducement.
2 Doc. #1, Exhibit 1. Defendants removed the action to federal court based upon federal question and
3 diversity jurisdiction. Doc. #1. Thereafter, Regas filed a motion to remand (Doc. #2) which the
4 court denied (Doc. #21) finding that there was complete diversity between the parties because non-
5 diverse defendant Ticor Title of Nevada was fraudulently joined.

6 Subsequently, Regas filed a motion to amend his complaint (Doc. #22) which the court
7 granted (Doc. #26). Regas's amended complaint joins additional non-diverse defendants and
8 alleges eleven causes of action: (1) injunctive relief; (2) declaratory relief; (3) debt collection
9 violations; (4) Nevada Unfair and Deceptive Trade Practices Act, NRS 598.0923; (5) Nevada
10 Unfair Lending Practices Act, NRS 598D.100; (6) breach of good faith and fair dealing;
11 (7) violation of NRS 107.080; (8) quiet title; (9) fraud through omission; (10) fraud in the
12 inducement; and (11) unjust enrichment. Doc. #27. Thereafter, Regas filed the present second
13 motion to remand. Doc. #28.

14 **II. Legal Standard**

15 Under 28 U.S.C. § 1441, "any civil action brought in a State court of which the district
16 courts of the United States have original jurisdiction, may be removed by the defendant or the
17 defendants, to the district court of the United States for the district and division embracing the
18 place where such action is pending." 28 U.S.C. § 1441(a).

19 Removal of a case to a United States district court may be challenged by motion. 28 U.S.C.
20 § 1441(c). A federal court must remand a matter if there is a lack of jurisdiction. *Id.* Removal
21 statutes are construed restrictively and in favor of remanding a case to state court. *See Shamrock*
22 *Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
23 (9th Cir. 1992). On a motion to remand, the removing defendant faces a strong presumption against
24 removal, and bears the burden of establishing that removal is proper. *Gaus*, 980 F.2d at 566-67;
25 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

1 III. Discussion

2 A. Federal Question Jurisdiction

3 A case may be removed to federal court if the action arises under federal law. *See* 28 U.S.C.
 4 § 1331; 28 U.S.C. § 1441. A case arises under federal law if the complaint establishes either that
 5 federal law created the cause of action, or that the plaintiff's right to relief "requires resolution of a
 6 substantial question of federal law." *Franchise Tax Bd. of Cal v. Constr. Laborers Vacation Trust*
 7 *for S. Cal.*, 463 U.S. 1, 13 (1983); *see also, Caterpillar Inc. v. Williams*, 482 U.S. 386, 382 (1987).

8 Regas's amended complaint alleges eleven causes of action. Doc. #27. Based on the face of
 9 the complaint, Regas alleges only state law claims insufficient to grant federal question
 10 jurisdiction. In opposition, defendants argue that removal is proper because Regas's claims are
 11 rooted in federal law. *See Grable & Sons Metal Prod. v. Darue Engineering & MFG.*, 545 U.S.
 12 308, 312 (2005) (federal question jurisdiction will lie over state law claims that implicate
 13 significant federal issues). Specifically, defendants argue that the Nevada Unfair and Deceptive
 14 Trade Practices Act claim requires the interpretation of federal law.² Therefore, defendants contend
 15 the court may exercise federal question jurisdiction.

16 However, contrary to defendants' position, this act defines state claims that are separate
 17 from, and have distinct legal precedents different than, its federal counterpart. Although federal
 18 regulations are expressly noted in the Nevada statute, these references only provide a framework
 19 for determining the types of claims that can be brought under the state statute. The fact that a
 20 violation of federal law may be a predicate for the violation of state law does not automatically
 21 elevate the state claim to a claim requiring "resolution of a substantial question of federal law"
 22 sufficient to establish jurisdiction. *Franchise Tax Bd. of Cal*, 463 U.S. at 13. Further, the Nevada
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24 ² The Nevada Unfair and Deceptive Trade Practices Act, found at NRS 598 et seq., provides that a
 25 person is engaged in a deceptive trade practice when that person conducts business without the appropriate state
 26 licenses or violates a state or federal regulation relating to the sale or lease of goods and services. NRS
 598.0923.

1 courts have interpreted these statutes without implicating federal issues. *See e.g., State ex rel. List*
2 *v. AAA Auto Leasing & Rental*, 93 Nev. 483 (Nev. 1977) (enforcing NRS 598).

3 Accordingly, the court finds that Regas's state law claims do not implicate significant
4 federal issues establishing federal question jurisdiction. *See e.g., California ex. Rel Lockyer v.*
5 *Dynergy, Inc.*, 375 F.3d 831, 841 (9th Cir. 2004) (finding that removal was proper only because the
6 state causes of action turned on the defendant's compliance with federal regulations). Therefore,
7 the court cannot exercise federal question jurisdiction.

8 **B. Diversity Jurisdiction**

9 Generally, an action is removable only if none of the defendants is a citizen of the state in
10 which the action is brought. 28 U.S.C. § 1441(b). However, if a plaintiff, after removal, joins a
11 defendant to the action whose joinder would destroy diversity jurisdiction, the court may either
12 deny joinder or permit joinder and remand the action. 28 U.S.C. § 1447(e).

13 Initially defendants removed this action based on diversity jurisdiction arguing that non-
14 diverse defendant Ticor Title-Reno aka Ticor Title of Nevada was fraudulently joined. Doc. #1. In
15 his amended complaint, Regas joins two additional non-diverse defendants, Gregory Lawson
16 ("Lawson") and the now defunct Dana Capital Group, Inc., in an effort to defeat the court's
17 exercise of diversity jurisdiction. Doc. #27. In opposition, defendants contend that the newly joined
18 defendants, along with Ticor Title of Nevada, are fraudulently joined defendants whose citizenship
19 is not determinative of diversity jurisdiction and therefore the court should not remand the action
20 pursuant to 28 U.S.C. § 1447(e). *See* Doc. #29.

21 A fraudulently joined defendant does not "defeat removal on diversity grounds." *Ritchey v.*
22 *Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). Fraudulent joinder "occurs when a plaintiff
23 fails to state a cause of action against a resident defendant, and the failure is obvious according to
24 the settled rules of the state." *Ritchey*, 139 F.3d at 1318; *see also McCabe v. General Foods Corp.*,
25 811 F.2d 1336, 1339 (9th Cir. 1987); *Kruso v. International Tel. & Tel. Corp.*, 872 F.2d 1416,

1 1426-27 (9th Cir. 1989); *Gasnik v. State Farm Ins. Co.*, 825 F.Supp. 245, 247 (E.D. Cal. 1992). In
2 determining whether a cause of action is stated against a non-diverse defendant, courts look only to
3 a plaintiff's pleadings. *Gardner v. UICI*, 508 F.3d 559, 561 n.3 (9th Cir. 2007).

4 Nevada is a notice-pleading jurisdiction which liberally construes pleadings. *Chavez v.*
5 *Robberson Steel Co.*, 584 P.2d 159, 160 (Nev. 1978). The allegations of a complaint are sufficient
6 to assert a claim for relief when the allegations "give fair notice of the nature and basis" for a
7 claim. *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 874 P.2d 744, 746 (Nev. 1994).

8 Here, Regas alleges four claims against Lawson³ for violation of NRS 598D.100; breach of
9 the good faith and fair dealing, fraud through omission, and fraud in the inducement. *See* Doc. #27.
10 The court has reviewed the papers and pleadings on file in this matter and finds that Regas has
11 failed to sufficiently assert a claim for relief against Lawson. There are no allegations in the
12 complaint relating to any specific contract between Regas and Lawson which would support a
13 claim for breach of the covenants of good faith and fair dealing. Further, Regas fails to allege any
14 of his claims for fraud with sufficient particularity to satisfy the heightened pleading standard of
15 Rule 9 of the Federal Rules of Civil Procedure. Finally, there are no allegations in the complaint
16 that Lawson, himself, acted as a lender in this matter. Rather the complaint is quite clear that
17 Lawson was an employee of the lender, and as such, is not liable under NRS 598D.100 as a matter
18 of law. *See* NRS 598D.100 (stating that it is an unfair lending practice for the lender to engage in
19 the unlawful enumerated behavior). Accordingly, the court finds that non-diverse defendant
20 Lawson is a fraudulently joined defendant whose citizenship does not defeat the exercise of
21 diversity jurisdiction.

22 As to defendant Ticor Title of Nevada, Regas's original claim for civil conspiracy has been
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24 ³ As joined defendant Dana Capital Group, Inc. was a defunct Nevada corporation prior to its joinder
25 in this action, its citizenship is not determinative when addressing diversity jurisdiction. *See e.g., Newcombe*
26 *v. Adolf Coors Company*, 157 F.3d 686 (9th Cir. 1998) (holding that only known defendants in existence at the
time an action is commenced are determinative of diversity jurisdiction).

1 dropped in the amended complaint. Thus, there are no causes of action which establish a cause of
2 action against Ticor. Accordingly, the court finds that Ticor Title of Nevada is also a fraudulently
3 joined defendant whose Nevada domicile does not defeat the exercise of diversity jurisdiction.
4 Therefore, the court shall deny Regas's second motion to remand.

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6 IT IS THEREFORE ORDERED that plaintiff's second motion to remand (Doc. #28) is
7 DENIED.

8 IT IS SO ORDERED.

9 DATED this 8th day of October, 2010.



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12 LARRY R. HICKS
13 UNITED STATES DISTRICT JUDGE
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